



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pinkerton Security & Investigation Services

File: B-246536.5

Date: August 30, 1993

Hamilton Loeb, Esq., and John M. Oseth, Esq., Paul, Hastings, Janofsky & Walker, for the protester, Leonard E. Moodispaw, Esq., for Essex Corporation, an interested party, Ronald E. Cone and Richard Leotta, Department of Energy, for the agency, Glenn G. Wolcott, Esq., Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Under a solicitation which called for the award of a cost reimbursement contract, agency properly rejected protester's proposal where, in response to the agency's request for updated proposals, protester modified various aspects of its cost proposal but failed to adequately document the basis for its modifications.

2. Awardee's proposal complied with solicitation requirement for submission of letters of intent from key personnel where, although several individuals rescinded their initial agreement that they would be available exclusively to the awardee, they continued to indicate an intention to work for the awardee if it was the successful offeror.

DECISION

Pinkerton Security & Investigation Services protests the Department of Energy's (DOE) selection of Essex Corporation for award of a contract under request for proposals (RFP) No. DE-RP04-91AL72307. The RFP sought proposals to operate DOE's Transportation Safeguards Training Center in Albuquerque, New Mexico. Pinkerton asserts that DOE improperly evaluated Pinkerton's cost proposal and Essex's technical proposal.

We deny the protest.

BACKGROUND

This RFP was issued on March 11, 1991, and contemplated award of a contract to provide all personnel, facilities, equipment, supplies, and services necessary to operate the Transportation Safeguards Training Center. The solicitation provided that proposals would be evaluated under the following factors, listed in descending order of importance: managerial/operational, business experience and corporate commitment, and cost.

Under the managerial/operational factor, the solicitation identified certain key positions and provided that each offeror must submit letters of intent from the personnel it proposed to fill those positions. Regarding cost proposals, the solicitation stated that proposals would be evaluated, among other things, on the basis of: (1) "allowability, allocability, reasonableness, and adequacy of the proposed cost"; (2) "reasonableness and appropriateness of the compensation proposed for employees"; and (3) "probable cost to the Government." The solicitation expressly stated that offerors must submit adequate documentation to support their proposals and noted that unrealistic cost estimates could be grounds for eliminating a proposal from the competition.

Initial proposals were submitted on April 19, 1991; discussions were subsequently conducted, and each offeror was asked to submit a "final revised proposal"¹ by June 24. On August 21, DOE selected Wackenhut Services, Inc. for contract award. Thereafter, Essex filed a protest challenging Wackenhut's selection. We sustained Essex's protest on the basis that Wackenhut's proposal did not contain letters of intent for most of the key personnel whom Wackenhut proposed.² Essex Corp., B-246536.3, June 25, 1992, 92-2 CPD ¶ 170.³ We recommended that DOE reevaluate the final revised proposals and, in the event those

¹Although such submissions are usually referred to as "best and final offers," here, DOE referred to them as "final revised proposals"; our decision uses DOE's nomenclature.

²In our decision, we also found that, after Essex filed an agency-level protest, certain documents related to Wackenhut's proposal were altered to make it appear that Wackenhut's proposal met the solicitation requirements.

³We subsequently denied Wackenhut's request for reconsideration. Wackenhut Servs., Inc.--Recon., B-246536.4, Aug. 31, 1992, 92-2 CPD ¶ 137.

proposals needed to be updated due to the passage of time, we recommended that DOE seek revisions only from offerors whose proposals complied with the solicitation requirements.

The agency subsequently determined that only Pinkerton's and Essex's final revised proposals complied with the solicitation requirements. By letters dated September 4, 1992, DOE sought updated proposals from those offerors, which Pinkerton and Essex submitted on October 5.

In evaluating Pinkerton's updated cost proposal, DOE determined that Pinkerton had decreased virtually all of the 36 direct labor rates contained in its proposal by a uniform amount, and also that Pinkerton had altered its labor overhead rates.⁴ DOE also determined that Pinkerton's updated proposal provided virtually no documentation regarding the basis for its modified rates. In an effort to assess the reasonableness and realism of Pinkerton's new rates, DOE sought assistance from the Defense Contract Audit Agency (DCAA), asking that DCAA review Pinkerton's proposal and provide its opinion regarding the realism and reasonableness of Pinkerton's proposed costs. DCAA personnel subsequently reviewed Pinkerton's proposal at Pinkerton's offices and discussed the proposal with Pinkerton personnel. Upon completing its review, DCAA stated that "[Pinkerton] did not provide any supporting documentation to support the estimated labor rates," and concluded that "[w]e do not consider the proposal to be acceptable as a basis for negotiation of a fair and reasonable price."⁵

Because of Pinkerton's failure to submit adequate documentation regarding the rates first presented in its updated proposal, DOE concluded it could not assess the "probable cost to the government" with regard to Pinkerton's proposal, as required by the solicitation.⁶ DOE concluded that it must either reopen discussions to obtain additional

⁴In light of the proprietary nature of the offerors' cost proposals, we will not discuss the specific individual costs associated with any of the offerors' proposals.

⁵In addition to Pinkerton's direct labor rates and labor overhead rates, DCAA questioned the general and administrative (G&A) rate which was contained in Pinkerton's earlier and updated proposals. The DCAA auditors noted that Pinkerton's actual G&A rate was substantially higher than that included in Pinkerton's proposals.

⁶In evaluating the probable cost to the government regarding Essex's proposal, DOE had upwardly adjusted Essex's proposed costs.

information regarding Pinkerton's new rates, or reject Pinkerton's proposal as unacceptable. Upon consideration, DOE rejected Pinkerton's proposal based on Pinkerton's failure to adequately document its proposed costs. On March 18, 1993, DOE selected Essex for award of a contract. This protest followed.

DISCUSSION

Pinkerton first complains that DOE's evaluation of its cost proposal was improper, arguing that DOE was obligated to either accept Pinkerton's proposal on the basis of the new, stated rates or reopen discussions with Pinkerton regarding those rates.

DOE responds that the solicitation required offerors to submit documentation supporting the specific costs contained in their proposals and specifically advised offerors that unrealistic cost estimates could be grounds for eliminating a proposal from the competition. DOE also notes that the updated proposals were the third submission of both offerors. DOE maintains that, since the defects in Pinkerton's proposal first appeared in the updated proposal, DOE was not required to discuss those defects with Pinkerton.

In submitting proposal revisions, an offeror may change or amend any aspect of its prior proposal; however, in doing so, an offeror runs the risk that the changes may render a previously acceptable proposal unacceptable. See, e.g., Control Data Corp. and KET, Inc., 60 Comp. Gen. 548 (1981), 81-1 CPD ¶ 531; Federal Business Sys., Inc., B-246514, Mar. 13, 1992, 92-1 CPD ¶ 283. In evaluating revised proposals, a procuring agency is not obligated to reopen discussions in order to remedy a defect introduced into a previously acceptable proposal. RCA Serv. Co., B-219643, Nov. 18, 1985, 85-2 CPD ¶ 563.

We have reviewed the protest file in this matter and agree that Pinkerton's updated proposal contained virtually no documentation explaining and supporting the modified direct labor and overhead rates that Pinkerton first introduced in its updated proposal. Although Pinkerton asserts that the lower direct labor rates were derived from interviews with the various personnel it was intending to use in performing the contract, its updated proposal contains no documentation regarding such interviews. Further, the uniform nature of the rate decreases is inconsistent with the assertion that the reductions resulted from the individual input of multiple potential employees.

In its comments on the agency report, Pinkerton states:

"[C]omparison of the Essex and Pinkerton [updated] proposals . . . shows that a number of the individual [direct labor] rates Pinkerton proposed were lower than the rates Essex proposed for the same positions (although Pinkerton's qualitatively higher-ranked personnel slate would naturally cost somewhat more than Essex's overall)." (Emphasis in original.)

Rather than supporting Pinkerton's assertion that the agency had no basis to question its modified rates, this comment highlights DOE's legitimate concern regarding the realism of the Pinkerton's proposed personnel costs, since it suggests that Pinkerton might have been proposing more highly skilled personnel at unrealistically low rates.


As noted above, the solicitation specifically provided that cost proposals must be evaluated on the basis of "reasonableness and appropriateness of the compensation proposed for employees" and "probable cost to the government." Clearly, under the terms of the solicitation, DOE was obligated to assess whether Pinkerton's new rates were reasonable and realistic and, in the event DOE concluded they were not, to determine what the probable costs under Pinkerton's proposal would likely be. In submitting an updated proposal which modified various cost elements with little or no documentation, Pinkerton failed to comply with the solicitation requirement that proposals include adequate documentation to support proposed costs. DOE was thus justified in finding that it could not conclude that Pinkerton's revised costs were reasonable or calculate the probable actual cost to the government. On this record, the agency reasonably rejected Pinkerton's updated proposal.

Pinkerton also protests that DOE's selection of Essex was improper because Essex's proposal failed to comply with the solicitation requirement regarding submission of letters of intent for key personnel. The solicitation required that letters of intent be submitted for 15 key personnel in 9 different labor categories. Pinkerton asserts that Essex's proposal should have been rejected as failing to meet the letter-of-intent requirement for two specific individuals that Essex proposed as key personnel. Pinkerton acknowledges that Essex, in fact, submitted letters of intent for these two individuals but, after reviewing the documents provided by Essex and DOE in response to its protest, Pinkerton asserts that these two individuals rescinded their letters prior to Essex's submission of its updated proposal.

Since DOE properly rejected Pinkerton's proposal as unacceptable, Pinkerton is not an interested party to challenge the source selection. See, e.g., Satellite Transmission Sys., Inc., 70 Comp. Gen. 624 (1991), 91-2 CPD ¶ 60. In any event, based on our review of the record, Pinkerton's allegation is without merit. The letters of intent which Essex submitted for its key personnel initially gave Essex "exclusive" authority to include each of the key personnel in Essex's proposal. Subsequently, several individuals, including the two on whom Pinkerton's protest focuses, wrote letters to Essex, stating that they were rescinding the exclusive nature of their commitments. However, each of the "rescission" letters specifically indicates an ongoing desire and intent to work for Essex, should Essex win the contract.

As we explained in the previous protest regarding this procurement, provisions requiring submission of letters of intent are included in solicitations to provide agencies with assurances that the key personnel proposed by offerors are, in fact, intending to work for the offeror proposing them. Essex Corp., supra. Here, the record shows that Essex obtained and submitted letters of intent for all the key personnel it proposed, including the two individuals specifically challenged by Pinkerton. The rescission letters on which Pinkerton's protest relies do not negate the stated intent of those individuals to be available to perform the contract for Essex. Accordingly, Essex's proposal complied with the solicitation requirements.

The protest is denied.


for James F. Hinchman
General Counsel